

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DONNA M. TRAMONTOZZI

346 Coronado Ave

Half Moon Bay, CA 94019

Registered Nurse License No. 432864

Respondent.

Case No. 2012-284

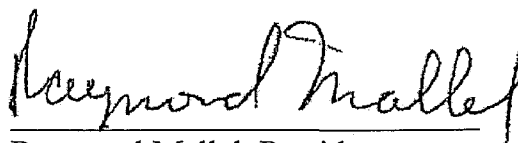
OAH No. 2012051082

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on March 18, 2013.

IT IS SO ORDERED this 16th day of February, 2013.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on September 6, 2012, in Oakland, California.

Diann Sokoloff, Supervising Deputy Attorney General, represented Louise R. Bailey, Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

Cathleen P. Demant, Goyette & Associates, Inc., represented Donna M. Tramontozzi, who was present throughout the administrative hearing.

The matter was submitted for decision on September 6, 2012.

FACTUAL FINDINGS

1. Louise R. Bailey, M.Ed., R.N., brought the accusation against Donna M. Tramontozzi (respondent) in her official capacity as the Executive Officer of the Board of Registered Nursing (Board).
2. On September 30, 1988, the Board issued Registered Nurse License No. 432864 to respondent. Respondent's license is scheduled to expire on October 31, 2012, unless renewed.
3. On January 6, 2011, in the Superior Court of California, County of San Mateo, respondent was convicted of violating Vehicle Code section 23103.5, subdivision (a) (reckless driving involving drugs or alcohol), a misdemeanor. Imposition of sentence was suspended and respondent was placed on court probation for a period of two years on

conditions that included completing the first offender driving under the influence program, and paying various fines and fees totaling \$1,455.

4. The facts underlying the conviction are that on January 5, 2010, a California highway patrol officer observed respondent drifting between lanes while driving. The officer pulled respondent over at 6:52 p.m. He did not smell alcohol on respondent's breath, but administered field sobriety tests. Respondent was unable to accurately complete the tests. Respondent told the officer that she was on her way home from work at the University of California, San Francisco (UCSF), and was tired. Respondent later admitted to the officer that she regularly took painkillers, and had taken Vicodin¹ at 10:00 a.m. that morning, and at 10:00 p.m., the night before.

A baggie of various prescription painkillers was located on the floorboard of the patrol car two days after respondent had been arrested. No other suspects had been transported in the patrol car in the time between respondent's arrest and the discovery of the medication.

5. The Board has incurred \$7,085 in costs in the enforcement of this matter. There was no objection to the reasonableness of these costs.

Respondent's Evidence

6. Respondent studied nursing at Phillips Beth Israel School of Nursing in New York. She received her degree in nursing on May 5, 1985. Respondent's first job as a nurse was in the pediatrics unit at Beth Israel. After 18 months in pediatrics, she transferred to the operating room. Respondent next worked at New York Cornell Medical Center, where she specialized in gynecology, plastic surgery and cardiology.

7. In the fall of 1988, respondent moved to San Francisco and accepted a position at UCSF in the cardiology unit. She stayed at UCSF until 1997. While at UCSF respondent became certified as an operating room nurse.

8. In 1997, respondent left nursing to work in real estate. Respondent reports having become tired of being on call and working through the middle of the night to assist in heart and lung transplant operations. Respondent worked successfully in real estate until 2007, when she needed medical insurance and decided to return to nursing.

9. UCSF hired respondent back as a Clinical Nurse II in 2007. Respondent has since been promoted to a Clinical Nurse IV, which is a clinical nurse specialist. Respondent

¹ Vicodin is the brand name for a combination of acetaminophen (Tylenol) and hydrocodone. Hydrocodone is an opioid pain medication, a Schedule III controlled substance under Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022.

works in a pod of surgery services including laproscopic surgery, genital surgery, gynecological surgery, liver, pancreas and kidney transplants and organ harvesting.

10. Respondent pled no contest to reckless driving involving drugs as a result of her January 5, 2010 arrest. At hearing, respondent stated that she was very tired, had taken Vicodin the night before, and was wearing a Fentanyl² patch on the date of her arrest. Respondent had prescriptions for both medications.

11. Respondent has had many sports-related injuries. She underwent surgery on her left knee to repair her anterior cruciate ligament in 1987, but continued to suffer from knee problems. She began to use Vicodin for pain in 2002 for various medical conditions. In 2005, she sought medical treatment for pain in her left knee while walking. She was told she was too young for a total knee replacement, so she continued to treat the pain with Vicodin.

12. Between 2005 and 2008, respondent took increasing amounts of Vicodin to control the pain in her knee. In 2009, respondent's pain level increased dramatically. She injured her right shoulder, and also suffered from finger joint pain. In addition, respondent was diagnosed with a herniated disc in two places in her neck, and had ongoing cervical pain as a result. Respondent was prescribed a large amount of Vicodin in 2009 by her primary care physician. Respondent states that she had a very high tolerance for pain medications at this time due to her lengthy use of Vicodin, and she needed to take many pills in order to obtain pain relief. Respondent was also prescribed Dilaudid³ by a neurosurgeon that she was seeing for her cervical pain. In October 2009, respondent was prescribed a Fentanyl patch by a pain management specialist. She continued to use Vicodin for spikes in pain while using the Fentanyl patch. In November and December 2009, respondent was also prescribed oxycodone⁴ for pain.

13. In 2009, respondent was working at UCSF Monday through Friday from 7:00 a.m. to 3:00 p.m. She states that she did not take the prescribed pain medication while she was working, except for the Fentanyl patch, which she wore around the clock. Respondent reports, but did not provide corroborative evidence, that she advised her supervisor at UCSF that she was using a Fentanyl patch. Respondent states that she would take her last pain pill

² A Fentanyl patch contains opiate medication used for chronic pain, requiring continuous, around-the-clock narcotic pain relief. Fentanyl is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (c)(8), and a dangerous drug pursuant to Business and Professions Code section 4022.

³ Dilaudid is the brand name for hydromorphone hydrochloride, an opiate pain medication and a Schedule II controlled substance under Health and Safety Code section 11055.

⁴ Oxycodone is an opiate narcotic pain medication. It is a Schedule II controlled substance.

before going to sleep at around 9:30 p.m., and would not take any other pain pills until she was off work.

14. Respondent continued to use pain medication in 2010. In early 2010, respondent underwent bilateral carpal tunnel release surgery. She was later hospitalized for an infection to her right hand, following the surgery. In March 2010, respondent underwent a total knee replacement.

15. In August 2010, after recovering from her knee replacement surgery, respondent began to treat with William J. Glatt, M.D., an addiction specialist, because she wanted to reduce her pain medication intake. She checked into Mills Peninsula Hospital rehabilitation facility for two days to detoxify from Vicodin. She was prescribed and began a course of Suboxone, a medication used to treat opioid dependence. Respondent does not consider herself addicted to drugs, however, she acknowledges that because she used so much pain medication, her body had become dependent upon it. She continues to see Dr. Glatt at least monthly. When she attends her monthly appointments, Dr. Glatt has her take a urine test to check for medication abuse. While under Dr. Glatt's care, she has continued to take Suboxone. Following a root canal, and a July 2012 right knee arthroscopy, Dr. Glatt oversaw her use of pain medication. She was prescribed Vicodin while recovering from these procedures.

Respondent did not provide evidence from Dr. Glatt in which he corroborates this testimony, or provides his opinion regarding her medication intake and its impact on her ability to practice nursing safely.

16. Respondent is still employed at UCSF, but no longer works 12-hour shifts. She is on modified duty at present because of her recent right knee arthroscopy.

LEGAL CONCLUSIONS

1. In an action seeking to impose discipline against the holder of a professional license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 957.)

2. Complainant asserts that respondent's license is subject to discipline for unprofessional conduct pursuant to Business and Professions Code⁵ sections 2761, subdivision (a), and 2762, subdivision (b). Section 2761, subdivision (a), provides that the Board may take disciplinary action against a licensee for unprofessional conduct. Section 2762, subdivision (b), provides that unprofessional conduct includes the use of any

⁵ Further statutory references are to the Business and Professions Code unless otherwise noted.

controlled substance, as defined in Health and Safety Code commencing with section 11000, or a dangerous drug, as defined in section 4022, to an extent or in a manner dangerous to herself or any other person. In support of these allegations, the Board cites respondent's arrest for driving under the influence, and the officer's discovery of pain medication in the patrol car following respondent's arrest.

On the night of her arrest, despite being tired and having used controlled substances, respondent made the decision to drive a car. Her driving was unsafe and she was unable to complete the field sobriety tests as requested by the highway patrol officer. The consumption of controlled substances before driving reflects a lack of professional judgment and breach of duty to the general public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.) It was therefore established by clear and convincing evidence that respondent's conduct on the evening of her arrest was unprofessional. Cause exists to discipline respondent's license pursuant to sections 2761, subdivision (a), and 2762, subdivision (b).

It was not established by clear and convincing evidence that the medication found in the patrol car two days after her arrest was her medication, or that her possession of the medication, even if it were hers, amounted to unprofessional conduct. There is no cause to discipline respondent's license based upon this factual allegation.

3. Complainant also asserts that respondent's license is subject to discipline pursuant to sections 490 (conviction of crime substantially related to qualifications, functions, or duties of profession), 2761, subdivision (f) (conviction of offense substantially related to duties, qualifications, and functions of registered nurse), and 2762, subdivision (c) (conviction of a crime involving the consumption of a controlled substance as defined by Health and Safety Code section 11000 et seq., or a dangerous drug, as defined by section 4022).

It was established by clear and convincing evidence that respondent's conviction involved the consumption of a controlled substance or dangerous drug. (Factual Findings 3, 4, and 10.) It was further established that while under the care of physicians, respondent regularly used numerous controlled substances to control her pain over a long period of time. (Factual Findings 11 to 15.) Under these circumstances, respondent's violation of Vehicle Code section 23103.5 is substantially related to the qualifications, functions, and duties of a nurse, because her extensive use of controlled substances led to a serious lapse of judgment and raises a concern about her fitness to practice nursing. Respondent's conviction therefore subject's her nursing license to discipline under sections 490, 2761, subdivision (f), and 2762, subdivision (c).

Penalty Determination

4. As stated in Business and Professions Code section 2708.1, in determining the appropriate license discipline, protection of the public is the Board's paramount concern.

Respondent argues that because this is her first offense, and her first instance of license discipline, a public reproof is the appropriate penalty. While it is true that this is respondent's first instance of discipline, and the medications she used were prescribed by her physicians for various medical conditions, the amount of medication that respondent has used over the years raises a concern about her ability to safely practice nursing. (Factual Findings 11 through 15.) Respondent reports having taken action since August 2010, to reduce her use of controlled substances under the regular care of an addiction specialist. However, respondent submitted no evidence from Dr. Glatt. While respondent's efforts at rehabilitation demonstrate an important commitment, a public reproof is not sufficient to assure public safety in this instance.

Complainant argues for revocation of respondent's license based on her reckless driving conviction and the fact that she has been prescribed, and taken large amounts of pain medication over the years. Revocation of respondent's license, however, is unwarranted based on the evidence presented. Respondent has been convicted of a single misdemeanor. There is no evidence of unprofessional conduct at work. There is no evidence that respondent has ever taken medication other than as prescribed by her physicians. Nor was evidence presented which demonstrated that respondent abused pain medication. The only evidence of an addiction was respondent's own testimony that following her total knee replacement she chose to admit herself into a rehabilitation facility and place herself under the care of an addiction specialist in order to wean her body off of pain medication. (Factual Finding 15.)

A probationary license is the appropriate discipline in this case. Where a licensee has been convicted of an alcohol or drug-related offense, the Board's disciplinary guidelines⁶ recommend a probationary license including conditions that require the licensee to undergo substance abuse treatment and rehabilitation, including physical and mental health examinations, drug testing, and that the abstention from the use of alcohol and/or drugs unless under the care of a licensed physician.

Respondent argues that terms of probation requiring substance abuse treatment are unnecessary because she is currently under the care of an addiction specialist who is monitoring her medication use. Had respondent presented evidence from Dr. Glatt which had established that her addiction is being monitored sufficiently, that argument might have been persuasive. But respondent presented no medical evidence regarding the status of her addiction. Nor did the complainant present evidence that the medication taken by respondent, which was prescribed by her physicians, was inappropriately obtained.

Respondent has requested that if probation is recommended, a "Rule-Out" condition be ordered. A "Rule-Out" condition provides for a Board-approved examiner to determine whether the licensee is dependent upon drugs or alcohol, or has had problems with drugs or alcohol (drug or alcohol dependence in remission), that might reasonably affect the safe

⁶ California Code of Regulations, title 16, section 1444.5.

practice of nursing. If so, the licensee is then ordered to comply with conditions involving substance abuse treatment. If not, the substance abuse treatment and rehabilitation conditions are not invoked.

It is the Board's responsibility to take reasonable steps to ensure that respondent is safe to practice nursing. In order to make that determination, the Board needs an independent physician to evaluate respondent's condition and report to the Board. Based upon that physician's opinion, the Board will have the information it needs in order to determine whether imposition of the substance abuse conditions is necessary to protect the public in this case.

Costs

5. Complainant has requested that respondent be ordered to reimburse the Board for the costs of enforcing the accusation. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The Board reasonably incurred costs of investigation and enforcement in the amount of \$7,085. (Factual Finding 5.) In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the guidelines for the determining whether the costs should be assessed in the particular circumstances of each case. The *Zuckerman* court stated:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that [the cost award provision] does not deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing. Thus the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain a dismissal of other charges or a reduction in the severity of the discipline imposed.

Respondent has requested that the amount of the costs be reduced because her license will not be revoked or suspended, as requested by the Board in the accusation, and she therefore used the hearing process to obtain a reduction in the severity of the discipline imposed. The Board's request of revocation or suspension in the accusation was not unreasonable. The causes for discipline were proved at hearing. There is no basis upon which to reduce the costs incurred by the Board.

ORDER

Registered Nurse License No. 432864 issued to respondent Donna M. Tramontozzi is revoked. However, the revocation is stayed and respondent is placed on probation for three years on the following conditions.

Each condition of probation contained herein is a separate and distinct condition. If any condition of this order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this order, and all other applications thereof, shall not be affected. Each condition of this order shall separately be valid and enforceable to the fullest extent permitted by law.

- (1) **OBEY ALL LAWS** - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

- (2) **COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Board's probation program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

- (3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.
- (4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

- (5) **SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

- (6) **FUNCTION AS A REGISTERED NURSE** - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

- (7) **EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS** - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care

related employment with a full explanation of the circumstances surrounding the termination or separation.

- (8) **SUPERVISION** - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
 - (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
 - (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
 - (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by respondent with or without respondent present.
- (9) **EMPLOYMENT LIMITATIONS** - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

- (10) **COMPLETE A NURSING COURSE** - Respondent, at her own expense, shall enroll and successfully complete a course relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course. Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course. The Board shall return the original documents to respondent after photocopying them for its records.

- (11) **COST RECOVERY** - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$7,085. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation will apply.

- (12) **VIOLATION OF PROBATION** - If respondent violates the conditions of her probation, the Board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline revocation of her license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against her license,

the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

- (13) **LICENSE SURRENDER** - During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- ✱ (a) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (b) One year for a license surrendered for a mental or physical illness.

- (14) **PHYSICAL EXAMINATION** - Within 45 days of the effective date of this decision, respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

- (15) **MENTAL HEALTH EXAMINATION** - Respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

- (16) **RULE-OUT SUBSTANCE ABUSE ASSESSMENT** - If the examiner conducting the physical and/or mental health examination determines that petitioner is dependent upon drugs or alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol dependence in remission), that might reasonably affect the safe practice of nursing, then petitioner must further comply with the following additional terms and conditions of probation:

- (a) **PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE** - Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

- (b) **ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS** - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within 14 days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

- (c) **SUBMIT TO TESTS AND SAMPLES** - Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

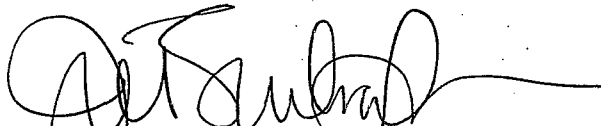
If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

- (d) **THERAPY OR COUNSELING PROGRAM** - Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation

of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: 10/3/12



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Accusation Case No. 2012-284

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 State Bar No. 161082
1515 Clay Street, 20th Floor
4 P.O. Box 70550
Oakland, CA 94612-0550
5 Telephone: (510) 622-2212
Facsimile: (510) 622-2270
6 *Attorneys for Complainant*

7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. **2012-284**

11 **DONNA M. TRAMONTOZZI**
74 Driftwood Circle
12 **Pacifica, CA 94044**

A C C U S A T I O N

13 **Registered Nurse License No. 432864**

14
15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about September 30, 1988, the Board of Registered Nursing issued Registered
23 Nurse License Number 432864 to Donna M. Tramontozzi (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought in this Accusation
25 and will expire on October 31, 2012, unless renewed.

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"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

8. California Code of Regulations, title 16, section 1444, states:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

“(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

“(b) Failure to comply with any mandatory reporting requirements.

“(c) Theft, dishonesty, fraud, or deceit.

“(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.”

9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 DRUGS

4 11. "Vicodin" is used to treat moderate to severe pain. It is a Schedule III controlled
5 substance pursuant to Health and Safety Code section 11506, subdivision (e)(4), and a dangerous
6 drug pursuant to Business and Professions Code section 4022.

7 FIRST CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 (Bus. & Prof. Code §2761(a), 2762(b))

10 12. Respondent has subjected her license to disciplinary action for unprofessional conduct
11 under Code sections 2761, subdivision (a) as defined by section 2762, subdivision (b) in that she
12 was arrested for driving under the influence of alcohol or a controlled substance. The
13 circumstances are as follows:

14 13. On or about January 5, 2010, San Bruno police officers responded to a phone call
15 about an erratic driver. A silver Honda Element was reported to be driving north-bound on El
16 Camino Real swerving and almost hitting other vehicles.

17 14. The police officers located the car driving north-bound on El Camino Real. The
18 officers observed that Respondent was driving, drifting and veering into the bicycle lane, and then
19 activated the overhead lights of the police car for a traffic stop. Officer 1 approached
20 Respondent's car, asked to see her identification, and asked Respondent where she was coming
21 from and where she was going. Respondent told Officer 1 that she had just got off work as a
22 nurse at University of California San Francisco Medical Center and was headed home.
23 Respondent said that she had worked for several days straight and was very tired. Officer 1 asked
24 Respondent if she had anything to drink or used prescription drugs and Respondent said no.
25 Officer 1 asked Respondent to step out of her vehicle and perform three field sobriety tests.
26 Respondent seemed disoriented, confused, and unable to fully concentrate while performing each
27 test. Officer 1 then asked Respondent to perform a Preliminary Alcohol Screening Test. The
28 result was a Blood Alcohol Content of .00%.

15. Officer 1 asked Respondent where exactly at University of California San Francisco Medical Center she worked and if there was a supervisor who could confirm that she had worked several days straight and was tired. Respondent said that she worked in the Moffett Long operating room and gave Officer 1 the name and telephone number of her supervisor. Officer 1 called Respondent's supervisor and was told that Respondent takes pain killers regularly. Officer 1 asked Respondent if she was taking pain killers and Respondent admitted to taking Vicodin. Respondent said that she had been taking pain killers for six years. While Officer 1 spoke with Respondent, Officer 2 conducted an interview of the witness who had initially called police about Respondent's erratic driving. The witness described Respondent's driving as periods of straddling lanes, driving too slowly, and swerving.

16. Based on Officer 1's observations of Respondent's driving, the witness observations of Respondent's driving, and Respondent's performance of the sobriety tests, Officer 1 placed Respondent under arrest for violating Vehicle Code section 23152, subdivision (a), driving under the influence.

17. Two days after Respondent was arrested, officers found a plastic baggie which contained prescription pills on the rear passenger side floorboard of their police car. Respondent was the last person transported in the back of the car. Therefore, it appears that the baggie and pills were discarded in the back of the police car by Respondent.

SECOND CAUSE FOR DISCIPLINE
(Criminal Conviction)
(Bus. & Prof. Code §2761(f), 2762(c))

18. Complainant realleges the allegations contained in paragraph 12 through 16 above, and incorporates them by reference as if fully set forth.

19. Respondent has subjected her license to disciplinary action under Code sections 490, 2761, subdivision (f), and 2762, subdivision (c), in that on or about January 6, 2011, in a criminal proceeding entitled *People of the State of California v. Donna Marie Tramontozzi*, in the San Mateo County Superior Court, Case No. NF394661, Respondent was convicted by a plea of nolo contendere of violating Vehicle Code section 23103.5, subdivision (a), (reckless driving

1 involving alcohol or drugs, or both), a misdemeanor. Respondent was sentenced to two (2) years
2 of probation and required to pay court restitution in the amount of \$1,455.00.

3 PRAYER

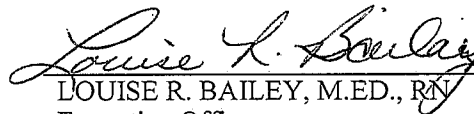
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 432864, issued to Donna
7 M. Tramontozzi;

8 2. Ordering Donna M. Tramontozzi to pay the Board of Registered Nursing the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3; and

11 3. Taking such other and further action as deemed necessary and proper.
12

13 DATED: November 4, 2011


14 LOUISE R. BAILEY, M.ED., RN
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

20 SF2011202652
21 accusation.rtf
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